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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

LEXINGTON INSURANCE  
COMPANY,

Plaintiff,

v.

AHERN RENTALS, INC., et al.,

Defendants.

2:10-CV-1913 JCM (LRL)

**ORDER**

Presently before the court are plaintiff Lexington Insurance Company's motions to dismiss defendant Ahern Rental's counterclaim (docs. #19, 20). To date, defendant Ahern Rentals has not responded.

Pursuant to Local Rule 7-2(b), an opposing party's failure to file a timely response to any motion constitutes the party's consent to the granting of the motion and is proper grounds for dismissal. *U.S. v. Warren*, 601 F.2d 471, 474 (9th Cir. 1979). However, prior to dismissal, the district court is required to weigh several factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of cases of their merits; and (5) the availability of less drastic sanctions." *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (citing *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)).

In light of the defendant's failure to respond and weighing the factors identified in *Ghazali*,

1 the court finds dismissal appropriate.

2 Accordingly,

3 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED plaintiff's motions to dismiss  
4 (docs. #19, 20) be, and the same hereby are, GRANTED;

5 IT IS FURTHER ORDERED that defendant Ahern Rental's counterclaim (doc. #4) is hereby  
6 dismissed without prejudice.

7 DATED June 28, 2011.

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10 UNITED STATES DISTRICT JUDGE